

FILED *af*UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

MAR 09 2010 YM

Mar 09 2010

MICHAEL W. DOBBINS

CLERK, U.S. DISTRICT COURT

-----X
 Flava Works, Inc.,)
)
 Movant,)
)
)
 v.)
)
)
 GoDaddy.com, Inc.)
)
 Respondent.)
 -----X

Case No. 2010-CV-0747

NOTICE OF MOTION AND
MOTION TO COMPEL
COMPLIANCE WITH
SUBPOENA**MOTION TO ORDER COMPLIANCE WITH SUBPOENA**

NOTICE is hereby given of the filing of this motion pursuant to Rule 45(c)(2)(B) of the Federal Rules of Civil Procedure by Jesse Lanshe, attorney for Movant/Plaintiff, Flava Works, Inc. ("Flava Works"), Inc. in the matter of *Flava Works, Inc. v. Smith*, Civil Action No. 1:10-CV-00747 (N.D. Ill.). This motion seeks to compel the Respondent GoDaddy.com, Inc. ("Go Daddy"), to comply with the subpoena that Flava Works issued it on February 19, 2010, and to produce and permit for inspection and copying the materials specified in that subpoena. The undersigned counsel has attempted to confer with Deputy General Counsel for Go Daddy with respect to this motion, but Go Daddy has refused to comply with the subpoena or to respond to Flava Works' attempt to further inquire as to Go Daddy's current position and investigation with regard to said subpoena.

This motion seeks an order from this Court directing Go Daddy to comply with the subpoena, and to produce the materials described therein. As will be explained in greater detail below, those materials are necessary to Flava Works in order to properly name and serve the

presently unidentified defendant in the case *Flava Works, Inc. v. Smith*, Civil Action No. 1:10-CV-00747 (N.D. Ill.).

BACKGROUND/DISCUSSION

Plaintiff in the underlying action is a producer of adult entertainment and distributes its materials and intellectual property to the consuming public via DVDs, magazines, and the Internet, among various other media. Defendant in the underlying action, the purported "Xavier Smith," is an individual that operates multiple Internet websites, including blogs and social networking sites, on and through which Defendant reproduces, copies and distributes, or facilitates the reproduction, copying and distribution of, Plaintiff's copyrighted and trademarked material without Plaintiff's permission or authorization in violation of the laws of the United States.

The chief website that Defendant used to infringe on Plaintiff's intellectual property was www.istackporn.net. This website was hosted by GoDaddy.com, Inc. As of December 29, 2009, the listed owner of that website, as listed in the registrant information on Whois.com, was: Keith Heghes, 6455 Argyle Forest, Jacksonville [sic], FL 32209. Take down notices sent to Heghes via U.S. Mail, pursuant to the Digital Millennium Copyright Act ("DMCA"), had been returned as undeliverable. This caused Plaintiff to inform Go Daddy that one of its customers had provided false indentifying information in violation of ICANN (Internet Corporation for Assigned Names and Numbers).

Go Daddy subsequently informed its client that his registrant information was not current. On January 15, 2009, the domain registrant information was updated to read: Xavier Smith, 6455 Argyle Forest Blvd., Jacksonville, FL 32244. On February 4, 2010, Plaintiff filed a

copyright infringement lawsuit against the purported "Smith" in the Northern District of Illinois and attempted to serve process upon Smith via process server in Jacksonville.

The process server attempted to serve process at Smith's registered address, as well as multiple other addresses which Plaintiff, after a diligent investigation, reasonably believed to be his residence. On February 17, 2010, the process server informed Plaintiff that he had been unable to serve the individual named Xavier Smith, due to that individual's incarceration since mid-2008. Since the infringement has been occurring since late-2009, this information led Plaintiff to believe that the purported "Xavier Smith" was not in fact the actual identity of the operator. Plaintiff maintains a good faith belief that the actual operator of the infringing websites has provided false registrant information in an effort to impede potential plaintiffs from policing infringement of their intellectual property.

§ 512(h) of the DMCA allows victims of copyright infringement to subpoena service providers for the identification of alleged infringers. The section reads, in pertinent part, "[the] service provider shall expeditiously disclose to the copyright owner or person authorized by the copyright owner the information required by the subpoena." 17 U.S.C. § 512(h)(5).

On February 19, 2010, Plaintiff sent Go Daddy a valid subpoena, pursuant to 17 U.S.C. § 512(h), requesting, among other things, any information in its possession that indicates the true identity of the owner of www.istackporn.net to be produced by March 5, 2010. See attached Subpoena and Supporting Documents. On March 5, 2010, Go Daddy failed to comply with the subpoena. Go Daddy has since remained silent and has neither responded to the subpoena nor has it responded to Plaintiff's counsel's attempt to inquire as to the status of Go Daddy's subpoena investigation, if any.


Plaintiff has heretofore been unable to properly serve Defendant because Defendant continues to hide behind the false identifying information he provided. Plaintiff continues to be harmed by Defendant's daily infringement by way of www.istackporn.net and other sites.

CONCLUSION

For the foregoing reasons, the Movant, Flava Works, Inc., respectfully requests that this motion be granted and that the Respondent, GoDaddy.com, Inc., be compelled to comply with the subpoena issued to it. A proposed order is attached for the Court's convenience.

DATED: March 9, 2010

Respectfully Submitted,

By: 
Jesse Lanshe (Att. No. 6300294)
In-House Counsel
Flava Works, Inc.
933 W. Irving Pk. Rd., Ste. C
Chicago, IL 60613
305-438-9450
Attorney for Movant
jesse@flavaworks.com

U.S. District Court (Rev. 12/06) Subpoena in a Civil Case

Issued by the
UNITED STATES DISTRICT COURT

Northern

DISTRICT OF

Illinois

SUBPOENA IN A CIVIL CASE

Flava Works, Inc. v. Xavier Smith
d/b/a. www.IStackPorn.net

Case Number: 10-CV-0747

TO: Compliance Dept.
GoTaddy.com, Inc.
14455 N. Hayden Rd., Ste 219
Scottsdale, AZ 85267

- ☐ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

- ☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME

- ☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

please see attached Exhibit A

PLACE

DATE AND TIME

933 W. Irving Pk Rd., Ste. C, Chicago, IL 60613

March 5, 2010 12pm

- ☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

Jesse Laushe Attorney for Plaintiff Flava Works, Inc.

2-19-2010

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Jesse Laushe, 933 W. Irving Pk. Rd. Ste. C, Chicago, IL 60613

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

jesse@flavaworks.com

Phone: 305-438-9450 ext. 307

If action is pending in district other than district of issuance, state district under case number:

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

Flava Works, Inc.,)	
)	
Plaintiff,)	Case No. 10-CV-0747
v.)	
)	
Xavier Smith,)	
d/b/a IStackPorn.net)	
d/b/a StacksWorld.info)	
d/b/a twitter.com/IStackPorn)	
d/b/a facebook.com/IStackPorn,)	
(alias IStackPorn))	
(alias Keith Heghes),)	
(alias "Soufbound"))	
Defendants.)	

Exhibit A to Subpoena Served on GoDaddy.com, Inc.

Items and information requested pursuant to this subpoena:

You are hereby **COMMANDED** to produce:

1. Any and all information in your possession pertaining to the identity of the individual(s) who own and operate IStackPorn.net including, but not limited to:
 - a. The individual's name;
 - b. The individual's address;
 - c. The individual's email address;
 - d. Billing information for IstackPorn.net's web hosting account;
 - e. The physical address and phone number of IStackPorn's business;
 - f. The physical address and phone number for any IStackPorn employees or principals, if any;
 - g. Your entire file on IStackPorn, commencing with IStackPorn's initial request to subscribe to your services, ending with any communications they have had with you regarding this particular action;
 - h. Copies of any and all DMCA notices provided to you due to infringements by IStackPorn or anyone else associated with the website
2. Documents pertaining to your "repeat infringer policy", or any similar policy, namely,
 - a. A copy of your repeat infringer policy;

- b. A listing of which prior customers were terminated pursuant to this policy
3. Any and all information in your possession pertaining to the identity of the individual(s)

who uploaded each and every file listed below, all of which were hosted on your servers.

This shall include the "IP" addresses of these users and any other information in your possession about them.

http://istackporn.net/wp-content/uploads/2009/12/2009-12-14_081522.jpg
<http://istackporn.net/wp-content/uploads/2009/12/downsouthtyson003-150x150.jpg>
<http://istackporn.net/wp-content/uploads/2009/12/downsouthtyson001-150x150.jpg>
<http://istackporn.net/wp-content/uploads/2009/12/downsouthtyson005-150x150.jpg>
<http://istackporn.net/wp-content/uploads/2009/12/downsouthtyson004-150x150.jpg>
<http://istackporn.net/wp-content/uploads/2009/12/downsouthtyson003-150x150.jpg>
<http://istackporn.net/wp-content/uploads/2009/12/downsouthtyson002-150x150.jpg>
http://istackporn.net/wp-content/uploads/2009/12/Zodiac.wmv_000737470-100x100.jpg
http://istackporn.net/wp-content/uploads/2009/12/Zodiac.wmv_000737470-100x100.jpg
http://istackporn.net/wp-content/uploads/2009/12/Zodiac.wmv_000737470-100x100.jpg
http://istackporn.net/wp-content/uploads/2009/12/Zodiac.wmv_000737470-100x100.jpg
http://istackporn.net/wp-content/uploads/2009/12/Zodiac.wmv_001740038-100x100.jpg
http://istackporn.net/wp-content/uploads/2009/12/Zodiac.wmv_001740038-100x100.jpg

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

Flava Works, Inc.,)	
)	
Plaintiff,)	Case No. 10-CV-0747
v.)	
)	
Xavier Smith,)	
d/b/a IStackPorn.net)	
d/b/a StacksWorld.info)	
d/b/a twitter.com/IStackPorn)	
d/b/a facebook.com/IStackPorn,)	
(alias IStackPorn))	
(alias Keith Heghes),)	
(alias "Soufbound"))	
Defendants.)	


APPLICATION AND DECLARATION

Pursuant to the Digital Millennium Copyright Act of 1998, 17 U.S.C. § 512(h), Flava Works, Inc. respectfully requests that the Clerk for the United States District Court for the Northern District of Illinois issue the attached subpoena to GoDaddy.com, Inc.

As required by 17 U.S.C. § 512(h)(2)(A), a copy of the notification sent to the service provider is attached hereto.

Pursuant to 17 U.S.C. § 512(h)(2)(C), I, Jesse Lanshe, attorney for Flava Works, Inc., hereby swears that the purpose for which Flava Works, Inc. seeks the requested subpoena is to obtain the identity of an alleged copyright infringer, and that such information will only be used for the purpose of protecting Flava Works, Inc.'s intellectual property rights.

Executed this the 19th day of February under penalty of perjury.

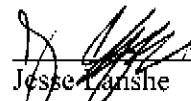


Jesse Lanshe
Illinois Bar No. 6300294

Affidavit in Support of Application and Declaration

1. The website www.IStackPorn.net has posted and continues to post Flava Works, Inc.'s copyrighted material on its website without permission or authorization.
2. On or around December 20, 2009, the "Who Is" domain registrant information for the website www.IStackPorn.net was listed as: Keith Heghes, 6455 Argyle Forest, Jacksonville [sic], FL 32209.
3. DMCA takedown notices sent to this address were returned as undeliverable.
4. On or around December 29, 2009, Flava Works, Inc. informed GoDaddy.com, Inc., the web host/registrar for www.IStackPorn.net, that the website's registrant information was incorrect, in violation of the requirements of the Internet Corporation for Assigned Names and Numbers (ICANN).
5. On or around January 15, 2010, the "Who Is" information was updated to read: Xavier Smith, 6455 Argyle Forest Blvd., Jacksonville, FL 32244.
6. On or around February 1, 2010, Flava Works, Inc. commenced a copyright infringement action against Xavier Smith due to this individual's purported ownership of the website IStackPorn.net.
7. Flava Works, Inc. had a good faith belief that the address listed for Xavier Smith above was false and attempted to serve a summons upon Mr. Smith at three different locations that, after an investigation, Flava Works, Inc. believed to be correct, including the Argyle Forest Blvd. address.
8. On or around February 17, 2010, the process server that Flava Works, Inc. had hired to serve the summons informed Flava Works, Inc. that the process server had been informed that Mr. Smith is currently incarcerated at an unknown location.
9. On or around February 17, 2010, new infringing material was posted on IStackPorn.net, indicating either that Mr. Smith is not incarcerated, or that Mr. Smith is not the actual owner of the IStackPorn.net website as is purported by the "Who Is" registrant information, but rather that it is a false name submitted for the purpose of further hindering the policing efforts of copyright holders.
10. Flava Works, Inc. maintains a good faith belief that the true owner of the website www.IStackPorn.net has provided false registrant information in an attempt to hide his identity from the companies whose material he infringes.

I affirm, under the penalties of perjury, that the above stated facts are true and correct to the best of my knowledge.



Jesse L. Anshe
Attorney for Plaintiff
IL Bar No. 6300294



2610 North Miami Ave., Miami, FL 33127-4438 • www.FlavaWorks.com • 305-438-9450 • FAX: 866-935-7275 • Toll Free: 1-877-352-6254

December 20, 2009

Registrant:

Keith Heghes
6455 argyle forest
Jackville, Florida 32209
istackporn@yahoo.com

Web Host:

GoDaddy.com, Inc.
14455 N Hayden Road Suite 226
Scottsdale, AZ 85260
Fax: (480) 505-8844

DMCA Notice of Copyright Infringement

I, Phillip Bleicher, owner of Flava Works, Inc., certify under penalty of perjury, that I am an agent authorized to act on behalf of the owner of certain intellectual property rights.

I have a good faith belief that the items or materials listed below are not authorized by law for use by the above named domain name owner or their agents and therefore infringes the copyright owner's rights. I hereby demand that you act expeditiously to remove or disable access to the material or items claimed to be infringing.

My contact information is as follows:

Flava Works, Inc
Phillip Bleicher, Owner
2610 North Miami Ave
Miami, FL 33127
Phone: 305-438-9450
Email: support@flavaworks.com

Infringing material that I demand be disabled or removed in consideration of the above:

http://istackporn.net/wp-content/uploads/2009/12/2009-12-14_081522.jpg
<http://istackporn.net/wp-content/uploads/2009/12/downsouthtyson003-150x150.jpg>
<http://istackporn.net/wp-content/uploads/2009/12/downsouthtyson001-150x150.jpg>
<http://istackporn.net/wp-content/uploads/2009/12/downsouthtyson005-150x150.jpg>
<http://istackporn.net/wp-content/uploads/2009/12/downsouthtyson004-150x150.jpg>
<http://istackporn.net/wp-content/uploads/2009/12/downsouthtyson003-150x150.jpg>
<http://istackporn.net/wp-content/uploads/2009/12/downsouthtyson002-150x150.jpg>
http://istackporn.net/wp-content/uploads/2009/12/Zodiac.wmv_000737470-100x100.jpg
http://istackporn.net/wp-content/uploads/2009/12/Zodiac.wmv_000737470-100x100.jpg
http://istackporn.net/wp-content/uploads/2009/12/Zodiac.wmv_000737470-100x100.jpg
http://istackporn.net/wp-content/uploads/2009/12/Zodiac.wmv_000737470-100x100.jpg



2610 North Miami Ave., Miami FL 33127-4438 • www.FlavaWorks.com • 305 438-0450 • FAX: 888 935 7275 • Toll Free: 1-877-352-8254

http://istackporn.net/wp-content/uploads/2009/12/Zodiac.wmv_001740038-100x100.jpg
http://istackporn.net/wp-content/uploads/2009/12/Zodiac.wmv_001740038-100x100.jpg

Location of ORIGINAL WORKS:

<http://www.FlavaWorks.com>

<http://www.cocoboyz.com>

<http://www.Thugboy.com>

Sincerely,

Digitally signed by Phillip Bleicher
DN: cn=Phillip Bleicher, o=Flava
Works, Inc, ou,
email=phil@flavaworks.com, c=US
Date: 2009.12.20 23:08:25 -05'00'

Phillip Bleicher,
Copyright Owner

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

-----X		
Flava Works, Inc.,)	
)	
Movant,)	Case No. 2010-CV-0747
)	
v.)	
)	
GoDaddy.com, Inc.)	
)	
Respondent.)	
-----X		

ORDER

On February 19, 2010, Movant, Flava Works, Inc. ("Flava Works") served a subpoena upon Respondent, GoDaddy.com, Inc. ("Go Daddy"), pursuant to 17 U.S.C. § 512(h), commanding them to produce, *inter alia*, any information it had regarding the true identity of the alleged copyright infringer "Xavier Smith," the defendant in the pending civil action: *Flava Works, Inc. v. Xavier Smith*, No. 1:10-CV-00747 (N.D. Ill.). As of March 9, 2010, Go Daddy has refused to comply with said subpoena.

On March 9, 2010, Movant submitted to this Court its Motion to Order Compliance With Subpoena, requesting that Go Daddy be compelled to produce the information requested in the subpoena.

Bases on the facts submitted by Movant in its Motion and supporting documents, Movant's Motion is **GRANTED**.

It is so **ORDERED**.

Signed this ____ day of March, 2010

By:_____